IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 12476 of 2004

Between:

1 The Superintending Engineer (PR), Medak at Sangareddy
2 The Executive Engineer (PR), Bodhan, Nizamabad District
3 The Deputy Executive Engineer (PR), Bodhan, Nizamabad District
4 The Assistant Engineer (PR), Yedapalli Mandal, Nizamabad District

..... PETITIONERS

AND

Thati Gangaram, O/o The Deputy Executive Engineer (PR)
Sub-Division, Bodhan, Nizamabad District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature Writ of "Certiorari" and calling for the records relating to the order passed in O.A.No.237/2004, dated 26-3-2004 on the file of Hon'ble A.P.Administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary.

Counsel for the Petitioners: GP FOR SERVICES II

Counsel for the Respondent: N.A.

The Court made the following:

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE G.RAGHU RAM

W.P.No.12476 of 2004

ORAL ORDER : (Per GR,J)

The writ petition is directed against the judgment of the Andhra Pradesh Administrative Tribunal dated 26.3.2004 in O.A.No.237 of 2004. The OA was allowed setting aside the proceedings dated 20.8.2003 of the petitioners herein. By the proceedings impugned in the O.A., the respondent herein was sought to be retired on superannuation reckoning his date of birth as 3.3.1944.

On the established facts, the respondent herein entered service as a Gangman on 1.7.1973 and became a permanent employee of the department with effect from 1.7.1977. At the time of opening his service book, his date of birth was recorded as 3.3.1944. Admittedly, the date was subsequently rectified by the Deputy Executive Engineer (PR), Bodhan as 14.08.1956. This entry is stated to have been made on the basis of a Transfer Certificate issued by the Head

Master, Primary School, Achampally. As the respondent was sought to be retired on attaining the age of superannuation on the basis that 3.3.1944 is his recorded date of birth, he filed the O.A. and therein on behalf of the writ petitioners, it was contended that the Deputy Executive Engineer (PR), Bodhan Sub-Division, was not competent to order correction of date of birth.

The learned Tribunal correctly came to the conclusion that admittedly there were two entries in Column No.4 of the Service Register of the petitioner, one made at the earlier point of time showing 3.3.1944 as the date of birth, which was scored off, and another date 14.8.1956 was recorded. In the circumstances, the learned Tribunal concluded that the authorities are obligated to issue a notice to the respondent herein before proceeding to rely upon the earlier scored off date of birth viz., 3.3.1944 for the purpose of retiring him on superannuation. Accordingly, while setting aside the impugned order retiring the respondent w.e.f., 31.3.2004 and directing his retention and continuance in service, the Tribunal left it open to the writ petitioners to proceed as per law in the matter.

It would appear that the earlier recorded date of birth 3.3.1944 was rectified apparently by the Deputy Executive Engineer (PR), Bodhan, somewhere in the year 1985, as 14.8.1956 on the basis of a Transfer Certificate issued by the Head Master, Primary School, Achampally. It is not clear whether this alteration was made at the instance of the respondent herein on the basis of his application and if not how the Transfer Certificate came to the knowledge of the Deputy Executive Engineer. It is stated in the counter affidavit filed before the Tribunal that some enquiries are being made against the Deputy Executive Engineer for this conduct. Be that as it may, as it has not been established from anything on the record that the correction was made at the instance of the respondent herein, in the context of two dates of birth being on the register, it was appropriate for the petitioners to have issued a notice to the respondent while relying on a scored off date of birth viz., 3.3.1944. This is what the Tribunal directed. It, however, requires to be noticed that if 14.8.1956 were to be taken as the date of birth of the petitioner, the date of the first entry

into service i.e., 1.7.1973 would result in a situation where the respondent would have entered the service at the age of 17 years, when he was a minor and therefore ineligible for entry into public service.

In the above circumstances, we consider it appropriate to dispose of the writ petition directing the petitioners to issue a notice to the respondent if they still desire to rely on 3.3.1944 as the respondent's date of birth and to take a decision in accordance with law after receiving any objections submitted by the respondent. The decision shall be taken within a period of three months from the date of receipt of a copy of this order. It is represented that the respondent has already retired from service with effect from 31.3.2004 pursuant to the order impugned in the O.A. In the totality of facts and circumstances till the decision is taken and within the time directed by us above, it may not be necessary for the petitioners to reinstate the respondent into service. In case, however, the petitioners come to the conclusion that 14.8.1956 is the correct date of birth of the respondent, the respondent shall be entitled to all the benefits consequent thereon including reinstatement into service and salary and emoluments for the period he was kept out of service on account of the order impugned in the O.A.

The writ petition is disposed of accordingly.

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knk 20.07.2004

Copy to:

1 The Superintending Engineer (PR), Medak at Sangareddy
2 The Executive Engineer (PR), Bodhan, Nizamabad District
3 The Deputy Executive Engineer (PR), Bodhan, Nizamabad District

4 The Assistant Engineer (PR), Yedapalli Mandal, Nizamabad District

5 2 CCs to G.P. for Services II, High Court Buildings, Hyderabad (OUT)

6 2 C.D. copies.